S.B. CIVIL SECOND APPEAL NO.427/2007

Shailesh
vs
Municipal Board, Rajsamand

Date of order : 28.11.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. SS Purohit, for the appellant.

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Heard learned counsel for the appellant.

The appellant is aggrieved against the judgment and decree passed by the first appellate court dated 14.9.2007 by which the appellate court modified the injunction decree granted by the trial court dated 21.3.2002.

Brief facts of the case are that plaintiff filed the suit for injunction alleging that the suit property was orally gifted to the plaintiff's grand father by Govind Shri Brijbhushan Lalji of Thikana Bhandar as the plaintiff's grand father gave Nazarana of Rs.11/- to the said Shri Govind Shri Brijbhushan Lalji. Govind Shri Brijbhushan Lalji had such power became at the relevant time entire Kankaroli village was under the administration of head of Dwarkadheesh temple and

Govind Shri Brijbhushan Lal ji was priest managing the properties with all rights to decide revenue and criminal matters of that village. Since then the land is in possession of the plaintiff's father and plaintiff. The land is measuring 35'x50' and the plaintiff is running his diary farm on the land in question. It is alleged that defendant Municipal Board, Rajsamand forcibly wants to evict the plaintiff from the property in dispute. Defendant Municipal Board, Rajsamand submitted written statement and admitted that Maharaja of the said Thikana had right to sell and bequeath the property, but the property in dispute on which the plaintiff has encroached is not belonging to the temple and it is the property of the Municipal Board. The defendant also stated that earlier the plaintiff was in possession of some other land and he was running his diary farm. He sold that plot and, thereafter, encroached upon the Government land. It is specifically stated that plaintiff is running the diary farm on plot no.10 before 23rd Nov., 2000.

In the trial court, the plaintiff produced his witness and defendant produced one witness Mangilal only. The plaintiff did not produce any documentary evidence to prove his title. The

trial court considered the statement of plaintiff's and defendant's witness Mangilal. The trial court observed that the defendant took the plea that said Maharaja used to give the Patta i.e, a deed in writing for the land in case he wanted to give the land to anybody but the defendant did not produce the copy of any Patta issued by the said Maharaja of Thikana Bhandar. Therefore, it is not proved that Maharaja of Thikana used to give Patta, hence, oral gift is proved. It is also observed by the trial court that the plaintiff's possession is admitted possession. In view of above reasons, the trial court granted prohibitory injunction against the plaintiff directing not to dispossess the plaintiff. The appellate court considered the reasons given by the trial court in detail and, thereafter, held that the plaintiff did not produce the receipt of Nazarana of Rs.11/-, which was alleged to have been given by the plaintiff's grand father to the said Maharaja nor there is any deed or documentary evidence in favour of the plaintiff that the land was given to plaintiff's grand father by said Maharaja. There is no direct evidence with respect to actual gift of the land by Maharaja to plaintiff's grand father except the oral evidence. The appellate court observed that

since plaintiff is in possession of the property, therefore, the defendant can remove the plaintiff only by following the due process of law. Aggrieved against the appellate judgment and decree as by that judgment and decree, the defendant has been permitted to remove the plaintiff by following the due process of law, this appeal has been filed by the plaintiff-appellant.

Learned counsel for the appellant vehemently submitted that in fact, the defendant categorically admitted that Maharaja of the said Thikana had right to sell and gift the immovable property to anybody. It is admitted that the land is belonging to the said Bhandar and, therefore, within the jurisdiction of the Maharaja (Priest) of Bhandar. It is also admitted fact that the plaintiff is in possession of the property in dispute. There is virtually no rebuttal from the side of the defendant-respondent of the evidence of the plaintiff and further the defendant failed to prove their title to the property and it did not produce any record by which the land in question was given to the Municipal Board by either Maharaja or by the State in any time. In view of the above reasons, the defendant Municipal Board had no right to

dispossess the plaintiff-appellant from the land in dispute. It is submitted that plaintiff proved his title by evidence and the trial court rightly granted decree and appellate court committed serious error of law.

I considered the submissions of learned counsel for the appellant and perused the reasons given by the two courts below.

So far as giving of Nazarana of Rs.11/- by the plaintiff's grant father to the Maharaja is concerned, there is no direct evidence either documentary or oral as none of the witness has stated that the property was gifted in his presence by the said Maharaja to the plaintiff's grand father. It was the duty of the plaintiff to prove his case that there was oral gift. It was not the case of the plaintiff that the Maharaja never used to give any Patta to anybody. The plaintiff since failed to prove the oral gift, therefore, the appellate court rightly observed that there is no evidence with respect to the actual gift of the land to the plaintiff by the said Maharaja. So far as weakness in the evidence of the defendant is concerned, that cannot help the plaintiff nor it can give title to the

plaintiff of the property in dispute. Since the plaintiff is in possession of the property in dispute, therefore, he can be dispossessed only by following due process of law. Therefore, the appellate court very carefully observed that the plaintiff's possession is required to be protected and he can be dispossessed only by following the due process of law.

In view of the above, I do not find any substantial questions of law are involved in this appeal. Hence,the appeal of the appellant is dismissed.

(PRAKASH TATIA), J.

c.p.goyal/-